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IN THE

Supreme Court of the United States

October Term, 1964
Case No. 426

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

REPLY TO MOTION TO DISMISS OR AFFIRM.

The Agency (appellee) has moved to dismiss or affirm appellants' appeal to this Court on two grounds:

1. Only one of the purported federal questions set forth in appellants' Statement of Jurisdiction was properly raised and preserved in the California courts.

2. The federal questions set forth in appellants' Statement of Jurisdiction are not substantial.

I.

Reply to Appellee's Contention That Only One of the Federal Questions Presented by Appellants in Their Statement of Jurisdiction Was Properly Raised and Preserved in the California Courts.

As a *general* reply, appellants respectfully point out that the California Supreme Court in its Opinion (Appendix "B" to appellants' J. S.) passed on each of the federal questions appellants' have presented in their appeal, and as this Court has repeatedly ruled, this, without further examination of the record, establishes the jurisdiction of the Court.

Raley v. Ohio, 360 U. S. 423, 436 (1958) which was also relied upon by the Court in *Kerr v. California,* 374 U. S. 23, 44 (Footnote No. 15), (1962):

> "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it."

Cissna v. Tennessee, 246 U. S. 289, 293:

> "The record does not show that *Cissna* specifically set up in the state courts any contention that the decision of the merits turned upon questions of federal law, except as this may appear by inference from the nature of the grounds upon which the decision was rested. But if the supreme court of the state treated federal questions as necessarily involved and decided them adversely to plaintiff in error, and could not otherwise have reached the result that it did, it becomes immaterial to consider how they were raised."

The cases cited by appellee at the bottom of page five in its Motion to Dismiss or Affirm, have, with the possible exception of *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, no application to the facts in this case. In each of the cases cited by appellee, except for *Mutual Life Ins. Co. v. McGrew* no federal question was presented to the lower courts until a petition for a rehearing was filed with the state supreme court. Appellants submit that the record shows that this is not the case here. With regard to *Mutual Life Ins. Co. v. McGrew,* appellants believe they have met the requirements of jurisdiction as set forth by this Court therein. Similarly, appellants submit that the cases cited by appellee at the top of page 11 of their Motion are not applicable, or at least conclusively applicable to the facts of this case.

Appellants wish particularly to emphasize the Federal Questions numbered (1) and (6) in their Notice of Appeal and Statement of Jurisdiction, and in order to demonstrate the manner in which the California Supreme Court passed on these questions, and that this Court may in any event have before it details of the record as it pertains to each, a synopsis of where and how each was raised is presented.

1. That Article XIII, Section 19, of the California Constitution and Sections 33950-33954[1] of the California Health and Safety Code Violate the Due Process and Equal Protection of the Laws Provisions of the Fourteenth Amendment to the United States Constitution.

In a Joint Pre-Trial Statement entered into by Appellants and the Agency, it was agreed that one of appellants' contentions was:

> "(2) the tax allocation features of the Final Plan, of the Community Redevelopment Law (California Health and Safety Code Sections 33000 *et seq.*) and of Article XIII, Section 19 of the Constitution of the State of California are *unconstitutional.*" [C. T. p. 551, lines 9-13. Emphasis added.]

In an Amendment to Joint Pre-Trial Statement entered into by Appellants and the Agency, it was stipulated that

> "the legal contentions of the Goldmans" (the Appellants herein) "are hereby amended to read as follows: * * * B. Sections 33950-33954 of the California Health and Safety Code, which authorize the inclusion in the Final Plan of Sections c.8.d(1) and (2), providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopment, *are void for*

[1]Sections 33950-33953 were re-numbered in 1963 as Sections 33670, 33671, 33672 and 33673. Section 33954 was repealed. The latter was not involved in the Constitutional questions raised herein. (See Appendix C, p. 90, Appellants S. J.)

uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area, because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made." [C. T. p. 575, lines 10-12 and p. 575, line 26, to p. 576, line 6. Emphasis added.]

The Trial Court in its decision in favor of the Agency ruled, under *Conclusions of Law:*

"Item 29: . . . and said Article XIII, Section 19 does not violate the Constitution of the United States." [C. T. p. 218, lines 30-31.]

Item 28 (Referring to Article XIII, Section 19 of the California Constitution, and Sections 33950-33954 of the California Health and Safety Code): "neither under said constitutional provision nor said statutory sections is the City Council required to obtain the consent of the other taxing agencies. . . . in respect to the allocation of taxes as provided in the Final Plan," (referring to the Final Plan for the Bunker Hill redevelopment project).

"Item 46: That Ordinance No. 113,231 does not violate the *Fourteenth Amendment* or Article I, Section 10 of the Constitution of the United States," (referring to the Los Angeles City Council ordinance that approved the Final Plan for the Bunker Hill redevelopment project, which was enacted in part pursuant to Article XIII, Section 19 of the

California Constitution and Sections 33950-33954 of the California Health and Safety Code. Emphasis added.)

In the Opinion portion of its Decision, the Trial Court ruled, without specifically mentioning the Federal Constitution, that Sections 33950-33954 do not constitute an "illegal abdication of legislative responsibility in permitting a municipal legislative body to deprive other taxing agencies of taxes without their consent". It is submitted, however, that when this is read in connection with the Court's findings under Conclusions of Law *(supra)*, that this becomes a ruling by the Court that Sections 33950-33954 do not violate the Fourteenth Amendment to the United States Constitution.

In its Opinion the Court also ruled that a city council when it allocates to pay for a city redevelopment project, taxes belonging to other taxing agencies, is not required to obtain the consent of the agencies whose taxes are thus taken without their consent. This, of course, is a ruling contrary to appellants' contention that if such consent is not obtained, then, insofar as these other taxing agencies and their taxpayers are concerned, they are deprived of due process of law (and equal protection of the laws)[2] as guaranteed to them by the Fourteenth Amendment. (See Trial Court's Decision, Section IX, the Goldman Action, Subsection 2, Consent of Other Taxing Agencies).

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[2]Although denial of "equal protection of the laws" was not specifically contended until the case reached the California Supreme Court, it is submitted that the various rulings of the Trial Court impliedly pass upon it.

In an appeal that was ultimately heard by the California Supreme Court,[3] appellants in their Opening Brief repeated verbatim their contention made in the Trial Court that Sections 33950-33954

> "are void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies . . . because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made." (A. O. B. p. 4.)

The attention of this Court is respectfully called to the fact that Appendix "A" of the Agency's Motion to Dismiss or Affirm, which purports to set forth where Appellants raised this federal question, does not contain this reference to where the question was raised before the Appellate Court. Actually, the Agency itself, on page 282 of its Respondent's Brief in the Appellate Court, summarized Appellants' contentions to the Court as follows:

> "(a) The City, by approving the Plan, attempts to appropriate taxes levied by another agency which has not consented. The City has no such power.
>
> "(b) While the State Legislature may have attempted to grant the City that power by enacting

[3]An appeal from the Trial Court Decision by appellants and other respondents in the case, was heard by the District Court of Appeal. The District Court did not pass on any of the constitutional questions raised by appellants in their appeal to this Court, but remanded the case to the Trial Court on other grounds, limiting its Decision to discussion of those grounds. Upon petition of the Agency and City the California Supreme Court then took jurisdiction.

California Health and Safety Code Sections 33950-33954, it is beyond the power of the Legislature to grant that power to a city.

"(c) Section 19 of Article XIII of the California Constitution, adopted in 1952, which ratified Sections 33950-33954 of the Health and Safety Code, does not in fact grant the Legislature power to authorize the allocation of increased tax increments to the payment of Agency obligations under these circumstances."

And, the Agency itself placed before the Appellate Court the contention of appellants that Article XIII, Section 19 of the California Constitution and Sections 33950-33954 of the California Health and Safety Code violate the Fourteenth Amendment to the United States Constitution, when the Agency stated, on page 284 of its Reply Brief:

"Nor can an appeal be made to the Federal Constitution on the ground that depriving a local government entity of a portion of its tax base, or a portion of the revenue that it might otherwise possess, *violates a federal protected constitutional right of that agency.*" (Emphasis added.)

In addition *Trautwein et al.*, one of the cases consolidated with Appellants in the California court proceedings, and who has separately filed an appeal to this Court, argued to the California Supreme Court (P. 54 Trautwein Reply Brief, under heading "Constitutional Questions") that:

"1. Sections 33950-33954 of the Health and Safety Code provide for an unlawful delegation by the State Legislature of its legislative discretion

to another agency, in that it has authorized (in this instance) the Los Angeles City Council to allocate tax money belonging to other agencies whose taxpayers are not represented on the City Council. Assuming that the Los Angeles City Council is acting as a state agency, it is still acting only in an administrative capacity and an attempted delegation to it of legislative discretion without establishing an ascertainable standard is unconstitutional. *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners,* 40 Cal. 2d 436, 254 P. 2d 29. 2. Furthermore, because tax money belonging to other taxing agencies is allocated by the Los Angeles City Council to pay for the redevelopment bonds, it is taxation without representation and thereby violates the Due Process and Equal Representation Under the Laws provisions of the Fourteenth Amendment to the United States Constitution."

An Amicus Curiae Brief on behalf of the California Apartment Owners Association and the Apartment Association of Los Angeles County, Inc., was also filed with the California Supreme Court, and supported the contention of Appellants and Trautwein *et al.* that Article XIII, Section 19 and Sections 33950-33954 violate the Fourteenth Amendment to the U. S. Constitution. *Twelve pages* of this brief (Most of 13-25 and 27 and 28) were devoted to a discussion of the following contention:

"B. Sections 33950-33954 Combined With Sections 33008 and 33730-33747 of the Health and Safety Code Effect an Unlawful Delegation of Leglislative Discretion . . . and Vest Uncontrolled Legislative Discretion in a Partisan Agency (Los An-

geles City Council) and Result in Taxation Without Representation, Both in Violation of the Equal Protection of the Laws and Due Process Clauses of the Fourteenth Amendment of the United States Constitution."

The California Supreme Court in its Decision in favor of the Agency, spent several pages discussing and passing upon appellants contentions regarding Article XIII, Section 19, and Sections 33950-33954 of the Health and Safety Code, *and the question of their constitutionality under the provisions of the Fourteenth Amendment.* (See pp. 73-76, specifically, but also pp. 76-79, Apdx. "B", Appellants' J. S.) Among the comments of the Court were:

> "The contention of the Goldmans in this regard that the tax allocations constitute an illegal abdication of legislative responsibility in permitting a municipal legislative body to deprive other taxing agencies of taxes without their consent *is not sustainable* . . ."
>
> * * *
>
> "We are therefore in accord with the opinion of the Attorney General that neither under the *constitutional provisions* nor the *statutory provisions,* is the legislative body required to obtain consent or agreement from other taxing agencies in respect to the allocation of taxes as provided in the final plan." (Cal. Supr. Ct. Op., pp. 75 and 76, Apdx. "B" Appellants' J. S.; Emphasis added.)

In reaching these conclusions the California Supreme Court had before it not only the question as presented by the Goldmans, but also as framed by Trautwein

and as stated and extensively argued by the Amicus Curiae brief in support of this particular question raised by the Goldmans and Trautwein.

If the California Supreme Court did *not* pass on the question of whether Article XIII, Section 19 of the California Constitution, and Sections 33950-33954 violate the Fourteenth Amendment to the United States Constitution, in the Court's statements referred to and partially quoted *supra*—and appellants respectfully submit that the Court did—then the Court *must* have done so when, at the end of its Opinion, the Court stated:

"Such *other* contentions as appear to be made or suggested by *objectors*" (*i.e.* Goldman and Trautwein) "or by Amici Curiae *are without substance* and . . . *devoid of merit.*" (Cal. Supr. Ct. Op., Appellants J. S. Apdx. "B", p. 84; Emphasis added.)

6. Los Angeles City Ordinance 113231, Approving the Bunker Hill Urban Renewal Project 1-B Plan, Violates the Equal Protection Under the Laws Provision of the Fourteenth Amendment in That It Requires Owner-Participants in the Project to Pay Their Pro-Rata Share of the Cost of Site Improvements, But Does Not Require Developers Who Purchase Property Within the Project to Do So.[4]

Appellees do not contest that this point was properly raised and preserved in the California courts. (Aps. Mot. Dismiss/Affirm, p. 3, second paragraph under point "5").

Appellants alleged in their Original Complaint and First Amended Complaint (which were ultimately stipulated to be a responsive pleading to the Agency's *In*

[4]For purposes of clarity the question is somewhat reworded here from the way it was presented in the Notice of Appeal to this Court and appellants' Statement of Jurisdiction.

Rem action from which this appeal arises), that Los Angeles City Ordinance 113231 approving the Plan for the Bunker Hill Urban Renewal Project did not set forth clearly whether developers purchasing property within the Project would be assessed their pro-rata share of cost of site improvements [C. T. p. 120, Item "(b)" lines 24-27; "(d)" line 30 to p. 121, line 2; and p. 121, lines 12-19], and whether owners within the Project who wish to participate in the redevelopment of their land, may be required to pay a share of the cost of site improvements. [C. T. p. 121, lines 23-28.]

Appellants then alleged:

> "It is the contention of the defendants that they have discretionary power to determine . . . whether or not the developers may be exempted from such costs while at the same time imposing such costs against the owners of the land who agree to participate in the project." [C. T. p. 124, lines 18-19 and 26-28.]

Appellants contended this interpretation by the defendants

> "constitutes the granting of special privileges or immunities to an arbitrary class of persons, to-wit, the developers, and violates the equal protection of the laws guaranteed by both the State and Federal Constitutions." [C. T. p. 125, lines 19-24.]

Appellants next pointed out that under Section 33885 of the California Health and Safety Code (since recast as Section 33433), the Agency is required in selling land within a redevelopment project, to sell it for its "fair value", and that there is no ascertainable standard in the Plan that determines whether "fair value"

shall or shall not include the cost of site improvements. [C. T. p. 125, line 25, to p. 126, line 24.] Appellants then alleged:

> "It is the contention of the defendants that the Agency, in arriving at 'fair value', *with respect to a sale made to developers,* as distinguished from a sale made to owners who may be allowed to participate, may interpret 'fair value' to mean a price *less than the cost of the acquisition of the land* . . . and *less the cost of the installation of new public site improvements.*"

And that

> "It is the further contention of the defendants that in arriving at 'fair value' *with respect to owners* who may be permitted to participate in the project, the 'fair value' shall be interpreted by them (the Agency) to mean the *actual value of the land . . . plus the cost of the installation of new public site improvements.*" [Some of the emphasis added; parenthetical (the Agency) added. C. T. p. 126, line 25, to p. 127, line 9].

In an Amendment to the Joint Pre-Trial Statement entered into by appellants and appellees, it was stipulated that appellants' legal contentions included:

> "The Agency's interpretation of 'fair value' violates Article I, Section 2 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States in that such interpretation does not have a uniform application. Such interpretation also constitutes the granting of special privileges or immunities to an arbitrary class of persons, to-wit: the developers,

contrary to the provisions of Article I, Section 21 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States." [C. T. p. 577, line 32, to p. 578, line 9.]

The Trial Court in its Decision ruling against appellants, clearly stated appellants' contention that:

> "5. The provisions of the redevelopment plan which require an owner who agrees to participate in the redevelopment project to assume financial responsibility for his pro-rata share of the costs of the necessary site improvements . . . while at the same time exempting the redevelopers from a similar financial responsibility violates the equal protection provisions of the California and United States Constitutions." (Trial Court Decision, Section IX, "The Goldman Action," Subsection 4, "Re Costs of Demolition and Site Improvements").

The Court's answer to this contention, it is submitted, can be summed up in one quotation from its Decision, to wit:

> "A recoupment in the cost of clearance and new site improvements in land sold to redevelopers will be reflected in the 'fair market value' for which the land will be sold." (Next to last paragraph of said Subsection 4, Section IX, Trial Court Decision.)

On appeal, appellants in their Opening Brief, to the District Court of Appeal, which was ultimately considered by the California Supreme Court[5] again presented the contention:

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[5]See footnote 3, page 7.

> "The provisions of the redevelopment plan which require an owner who agrees to participate in the redevelopment project to assume financial responsibility for his pro rata share of the costs of the necessary site improvements while at the same time exempting redevelopers from a similar financial responsibility violate the equal protection provisions of the Fourteenth Amendment of the United States Constitution." (Goldman Opening Brief to District Court of Appeal, pp. 114-115.)

Appellants supported their contentions with ten pages of argument. (Pp. 115-125).

The California Supreme Court in its Opinion noted this "complaint of *unconstitutional* discrimination by objector Goldman" (emphasis added), and then ruled against appellants (the Goldmans) on the grounds that developers purchasing property within the Project would be required to pay "fair market value," and that

> "Fair market value would, of course, include the value of the necessary site improvements for which a participating owner who retains ownership of his own land is required to pay his pro rata share. Thus no unfair discrimination is shown." (Cal. Sup. Ct. Op., last paragraph Sec. 7, "Owner Participation As Provided by Final Plan", p. 61, Appx. "B", Aps. J. S.)

Thus, the California Supreme Court clearly passed upon this Federal question, and as, Appellees admit, (*supra* p. 11), this Federal question was correctly raised and preserved in the California courts.

In addition, Appellants in a Petition for a Rehearing to the California Supreme Court, stated:

"The Court Erred In Determining That the Final Plan Imposed[6] On a Participating Owner the Assumption of Responsibility For His Pro Rata Share of the Costs of Necessary Site Improvements Whereas Redevelopers Are Exempted From a Similar Financial Responsibility." (App. Pet. Rehrg. p. 8.)

The California Supreme Court *denied* (as distinguished from *dismissed*) Appellants' Petition for a Rehearing.

II.

Reply to Appellee's Contention That the Federal Questions Presented by Appellants Are Not Substantial.

1. That Article XIII, Section 19, of the California Constitution and Sections 33950-33954[7] of the California Health and Safety Code Violate the Due Process and Equal Protection of the Laws Provisions of the Fourteenth Amendment to the United States Constitution.

It is contended by Appellees (p. 11, Aps. Mot. Dismiss/Affirm) that the unconstitutional delegation of legislative discretion authorized by the California Legislature by Sections 33950-33954 of the Health and Safety Code, and the *taxation without representation* that results therefrom, including, in the case of the Bunker Hill redevelopment project alone, the disenfranchisement of more than three million persons in Los Angeles County, is not a substantial Federal question because only the states of California and Minnesota are *at this time* involved! It is submitted that Appellee's argument is one of the most incredible ever made to

[6]In the original Petition for a Rehearing the words "Did Not Impose" were inadvertently used, instead of the word "Imposed."

[7]See footnote 1, page 4.

this court. Only the citizens of California and Minnesota are affected! Therefore this Court should not consider the contentions of Appellants! Suffice it to reflect, that one of the most cherished principles of our system of government is that if one single individual, no matter how lowly, in this great nation, may be deprived of due process of law or equal protection of the laws, that the highest court in this land will make a place in its crowded schedule to see that that person is heard.

What are the actual facts? How substantial a Federal question *is* presented by this alleged deprivation of rights guaranteed by our Federal Constitution?

1. Sections 33950-33954 effect an uncontrolled, naked delegation of legislative discretion by the California Legislature to another governmental agency. Due process of law and equal protection of the laws disappear. If Sections 33950-33954 are allowed to stand unchallenged, they will establish a far-reaching precedent under which legislative bodies, state and local, and perhaps even Congress, may abdicate, *without any control whatsoever,* the legislative discretion and responsibility which they are elected by the people to exercise, to agencies that are neither elected by or responsible directly to the people.

2. Sections 33950-33954 go further. They delegate legislative discretion to a *partisan* body. In the instant case they authorize the Los Angeles City Council to finance the city's share of the cost of a *city*[8] redevelopment project (in which the Council obviously has a

[8]Technically, any redevelopment project in California is a *state* project. But for all practical purposes, and realistically, a redevelopment project undertaken by a city is a *city* project.

prejudiced and vested interest) by appropriating tax money belonging to Los Angeles County, the Los Angeles School District, the Los Angeles County Flood Control District and the Metropolitan Water District. Yet many of the School District taxpayers, and more than half of the County, Flood Control District and Water District taxpayers (some *three million* of the residents of the County, Flood Control District and Water District)[9] live outside of the City! Furthermore, members of the City Council are under oath to represent the best interests of *City* taxpayers and residents.

(It is important to note that Sections 33950-33954 do not delegate *administrative* authority. They do not authorize the Council as an *administrative* agency of the state, to determine whether certain conditions have been met, such as whether other non-city taxing agencies, the county, school district, etc., will benefit from a city redevelopment project, in which event the use of county, school district, etc., tax money to pay for the project shall be *mandatory*—as in cases where local agencies are authorized to determine whether or not under state law certain property *shall* be exempted from paying taxes. On the contrary, Sections 33950-33954 give the Council absolute, uncontrolled *discretion* to

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[9]It is a matter of public record that the Los Angeles City School District includes areas outside of the City, but the exact number of persons residing in these areas is unknown to appellants. Los Angeles County population in 1962 is given as 6,038,771 and Los Angeles City as 2,470,015, in the 1962 County and City Data Book published by the U. S. Census, at page 32. Thus, in 1962, 3,568,656 persons in Los Angeles County resided outside the City (which is part of Los Angeles County). The Los Angeles County Flood Control and Metropolitan Water Districts include virtually all, but not quite all of Los Angeles County.

decide whether it *prefers* to finance a City redevelopment project by using county, school district, etc. tax money, or whether to finance it in some other manner, such as by a municipal bond issue, or revenue bonds, or a municipal tax, or from the City's general fund, etc.)

3. The unconstitutional delegation of legislative discretion authorized by Sections 33950-33954, clearly results, appellants contend, in *taxation without representation.* In the case of the Bunker Hill Project, taxes have been taken to pay for this *city* project (which it actually is, although technically a state project) from some *three million* or more Los Angeles County, Los Angeles Flood Control District and Metropolitan Water District residents (*supra*), and from an unknown number of residents of the Los Angeles School District, *without their consent,* and without any recourse available to them. None of these County, School District, Flood Control District, and Metropolitan Water District residents and/or taxpayers are represented in any way on the Los Angeles City Council. By contrast, city taxpayers (whose money is saved when the Council allocates County, School District, etc. tax money to pay for a city project) *are represented* on the Council. They elect council members, can recall them, elect and can recall the mayor who may veto council action (including action on redevelopment projects)—and as noted, Council members are under oath to *represent* the interests of city residents and taxpayers. (It is respectfully submitted that designating the City Council a *state administrative agency* when its acts on redevelopment matters, which it admittedly is but realistically is in *name only,* does not and can not change the foregoing facts.)

4. Specifically in the case of the Bunker Hill Project, the Los Angeles City Council acting under the authority granted by Sections 33950-33954, has shifted *three-fourths*[10] of the cost of this *city* redevelopment project onto the taxpayers of Los Angeles County, the Los Angeles School District, the Los Angeles County Flood Control District and the Metropolitan Water District.

Using the Agency's own figures, that portion of the cost of the *City's* Bunker Hill Project which the Los Angeles City Council, acting pursuant to Sections 33950-33954, has imposed on the County, the School District, the Flood Control District and the Metropolitan Water District, and their taxpayers, will at the minimum be about $15,000,000, and could run $30,000,000 or more.[11] But this is only the beginning. The City

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[10]It is a matter of public record that in 1959, the year the Bunker Hill Project was adopted, the combined tax rate levied against property within the Bunker Hill Project area was $8.0914, made up as follows: Los Angeles City $1.9574 (24%), Los Angeles County $2.0859 (26%), Los Angeles School District $3.4909 (43%), Los Angeles County Flood Control District $0.3872 (5%) and Metropolitan Water District $0.17 (2%). The 1964 rate is $9.1837 made up of: City $2.0871 (23%), County $2.3997 (26%), School District $4.2205 (46%), Flood Control $0.3364 (3.6%) and Water District $0.14 (1.4%).

[11]Sec. 10 of L. A. City Ord. 113231, approving the Bunker Hill Project Plan (See p. 103 Apdx. "C", Appellants' J.S.) authorizes the Agency to issue $20,000,000 in bonds with a maturity of up to 40 years, pursuant to Art. 4 of Ch. 5 of the California Community Redevelopment Law (this being another manner of citing Sections 33950-33954 of the Health and Safety Code—See Sec. 33000 thereof). See also pages 54-56 of Respondents' (Agency's) Brief in the California appellate courts. The Agency has stated, however, that it intends to issue only $15,000,000 in bonds (p. 54 said Brief), and that it expects to retire the bonds within ten years. (This latter statement has been publicly made, but appellants are not aware that it is a matter of court record. However, it is used here to calculate

of Los Angeles and other cities throughout California have under consideration and in various stages of preparation, a considerable number of urban renewal projects, which under Sections 33950-33954, if this Court does not rule these sections unconstitutional, will result in taking from other taxing agencies, from counties, school districts, water districts, etc., tens and probably hundreds of millions of dollars of their tax money to pay for these *city* redevelopment projects.

5. It is possible under Sections 33950-33954 for certain California cities (twenty in Los Angeles County

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the most favorable figure from the Agency's viewpoint). Using these *minimum* Agency figures, and assuming, conservatively, an interest rate of 4½% (it would make little difference for the purposes here whether it was 4% or 5%), and assuming a uniform amortization over 10 years (it is much more likely that amortization will not begin for several years, so that interest calculations here are probably on the *low* side) it can be calculated that the approximate *minimum cost* of the Bunker Hill Project bond issue to the County, School District, Flood Control District and Metropolitan Water District, which under present and recent tax schedules will pay three-fourths of the principal and interest of the bond issue (*supra*), will be: Principal = $15,000,000 x ¾ = $11,250,000. Interest = $15,000,000 x 4.5% = $675,000 divided by two to obtain average annual interest = $337,500 x 10 years = $3,375,000 total interest. $11,250,000 principal plus $3,375,000 interest = $14,625,000 as the *minimum* cost. Using the *maximum* permitted principal amount of $20,000,000 and maximum maturity date of 40 years, as authorized by Ord. 113,231, and subsequently by Agency Resolution No. 193 [Agency Ex. 42, see p. 46 said Agency Brief], the calculations are: Interest = $20,000,000 x 4½% = $900,000 divided by two to obtain average annual interest = $450,000 x 40 years = $18,000,000 x ¾ = $13,500,000. Added to $15,000,000 principal ($20,000,000 x ¾) this gives $28,500,000 as a maximum figure. Since, however, amortization (retirement) of bonds would probably not begin for several years, considerably increasing interest costs, so that the maximum cost to the County, School District, could easily be $30,000,000, or substantially more.

alone)[12] to finance the cost of their *city* redevelopment projects entirely by appropriating tax money belonging to counties, school districts, water districts, etc., without spending *one cent* of city taxpayers money, or federal money (thus avoiding coming under federal control).

Argument.

The question of whether Sections 33950-33954 of the California Health and Safety Code, and Article XIII, Section 19 of the California Constitution, violate the due process and equal protection of the laws provisions of the Fourteenth Amendment, have been the subject of widely ranging and lengthy exploration and debate (including two amicus curiae briefs) in this litigation which is now presented to this Court on appeal. Appellant is frank to admit that as the debate has progressed, the essence of the argument that Sections 33950-33954, and possibly Artile XIII, Section 19, violate the Fourteenth Amendment has become clearer. It is with this in mind, that Appellant hopes the following summation, kept as succinct as possible, although necessarily repeating for clarity and emphasis certain facts and arguments already set forth, will be helpful to the Court and all parties.

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[12]Pages 86-88 and 114-133 of the 1963 Taxpayers' Guide published by Los Angeles County, show that twenty cities within the County levy no real property tax. (They finance their cost of government by a sales tax, or other forms of taxation). But the same tables in the Guide show that Los Angeles County and various school, water and other districts, do levy a tax on real property within these cities. Thus, any of these cities can undertake a redevelopment project, and by allocating taxes from property within the project to pay for the project's cost (as permitted by Sections 33950-33954), the city, since it levies no property tax, could avoid paying any of the cost of the project, and instead shift the *entire* cost of the project onto the County and other non-city taxing agencies that do levy a tax on property within the project.

Sections 33950-33954 of the California Health and Safety Code were enacted in 1951. Their full text may be found in Appendix "C" of appellants' Statement of Jurisdiction. Briefly, Sections 33950 through 33953 provide that a redevelopment project "may" be financed entirely or in part by appropriating for this purpose all taxes resulting from any *increase* in the assessed value of real property (land and improvements) occurring within the redevelopment project area after the date of the adoption of the project. *Taxes* that may be thus appropriated are defined as *ad valorem* taxes levied by *any* taxing agency — a city, county, school district, any special districts, etc. Section 33954 provides that Sections 33950 through 33953 are to become effective upon adoption of an amendment to the California Constitution authorizing the tax allocations permitted by them. In 1952 such an amendment was approved by the California electorate as Section 19 of Article XIII of the Constitution. (See Apdx. "C", appellants' J. S.)

(In 1962, the next to the last paragraph of Section 19 of Article XIII, which had the effect of specifically ratifying and validating Sections 33950 through 33953, was repealed at the general election, as obsolete. Article XXII, Section 3(2) had been added to the Constitution in 1960, ratifying all matters previously ratified by individual clauses of the Constitution. In 1963, Sections 33950 through 33953 were re-enacted as Sections 33670 through 33673 of the Health and Safety Code, and Section 33954, being no longer necessary, was repealed.)

At the time Sections 33950-33954 were enacted, there were also enacted Sections 33008, 33278 and 33730 to

33747 of the Health and Safety Code.[13] These sections were in effect at the time Section 19 of Article XIII of the Constitution was approved, and in 1959 when the Bunker Hill Project Plan was adopted. Among other things, these sections designate the legislative body of a city (such as the Los Angeles City Council) as the governmental agency that shall give *final approval* to any redevelopment project in the city, *including the method of financing the project*. Thus, the effect of Sections 33950-33954, in conjunction with these other sections, was to authorize the Los Angeles City Council in the case of Bunker Hill Project, to decide for itself, completely at its own discretion, whether to finance three-fourths (*supra*) of the city's share of the cost of the project by appropriating for that purpose tax money belonging to Los Angeles County, the Los Angeles School District, and other non-city taxing agencies, or whether to finance it exclusively with city funds, *i.e.*, by a special tax, or bond issue, or from the city general fund, etc. Obviously, the Council chose to shift this financial burden onto the County, School District, etc., and their taxpayers.

The road into the unconstitutionality that in appellants' opinion cloaks Sections 33950-33954, begins with this abdication by the legislature of the discretion and responsibility granted to it by Article XIII, Section 19, of the California Constitution. This provision of the Constitution was enacted by a vote of *all* the people of the state, and through it the people said to the legislature, as the representative of *all* the people, you are

[13]In 1963 the matters covered by these sections were re-enacted in Sections 33007, 33120 and 33300 through 33372 of the Health and Safety Code.

given the authority to decide (*i.e.*, "The Legislature may provide . . . ."), and you are given the *responsibility* of deciding whether *in your judgment* redevelopment projects in the state *shall* be financed by the tax allocation procedures authorized by Article XIII, Section 19, or *under what conditions* they shall or may be so financed. Applicants submit that the basic unconstitutionality of Sections 33950-33954 arises from the fact that the legislature did not follow this constitutional procedure, but instead passed on to "local legislative bodies" the responsibility and decision making authority the people through the state constitution had placed in its hands.

Let us examine what occurs when the legislature abdicates its responsibility and decision making authority, as it has done through Sections 33950-33954, to another agency, in this case the Los Angeles City Council. The Council is given the power to decide whether to finance three-fourths of the city's cost of a city redevelopment project by appropriating for that purpose undetermined millions of tax dollars belonging to Los Angeles County, the Los Angeles School District, the Los Angeles Flood Control District, and the Metropolitan Water District—without obtaining the consent of these taxing agencies or their taxpayers, and without any recourse available to them. Yet, as noted, more than three million of the people in the county and the flood control and water districts and many of the people in the school district, live outside of the city, beyond the jurisdiction of the Council. They have no control over the Council. They cannot vote for Council members or recall them, or vote for or recall the mayor who has the power of veto over actions of the Council, in-

cluding redevelopment matters. When the taxes of these citizens are taken without their consent by an act of the City Council, *taxation without representation* taints the act. These citizens have no redress. The Council is not responsible in any way to them. It has no interest in them other than a neighborly interest, and for several hundred thousand living 30, 40 and 50 miles from the City Hall, not even that.

Under such circumstances, these citizens residing beyond the jurisdiction of the City Council, are deprived of their property (taxes) without any semblance of due process of law. Furthermore, since the county, school district, etc. levy taxes against property within the Bunker Hill Project to pay for specific services, many of which *must* be rendered, such as educating children of families living within the Project, when the tax money that would normally pay for these services is instead used to pay for the Project, the loss has to be made-up by an increased tax levy on county, school district, etc. taxpayers living outside the project, including those living, and whose property on which the increased levy falls is located, outside of the city. For those who justify the Council's action with the rationalization that it is acting as a state agency with all the power and responsibility entrusted to the legislature by the state Constitution, under Article XIII, Section 19, this is of no matter. For those whose taxes are thus taken, and, appellants submit, for those who guard the people's constitutional rights, this is *taxation without representation*.

There is no question that in *name* (at least so appellee alleges and the state courts have ruled) the Los Angeles City Council, when it acts in redevelopment

matters, acts as a state agency. But semantics cannot alter the facts. For those citizens who have their taxes taken, or taxes increased, without any representation or recourse, reality removes the cloak of terminology. Thus, as early as *Henderson v. Mayor of New York,* 92 U. S. 259, 268, this Court said: "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." This was quoted in *Wisconsin v. J. C. Penney,* 311 U. S. 432, where the Court also commented: "The descriptive pigeon hole into which a state court puts a tax is of no moment in determining the constitutional significance of the exaction." In *International Harvester Co. v. Wisconsin Dept. of Taxation,* 322 U. S. 435, 441, the Court stated: "In determining whether a tax is within the state's constitutional power, we look to the incidence of the tax and its practical operation, and not its characterization by state courts."

Let us explore further. Members of the Los Angeles City Council are under oath to represent the best interests of the citizens and taxpayers of the city. And as has been well asked by Amicus Curiae before the California Supreme Court; Can an act of the legislature unswear that oath? It is asking far too much of human nature and the law, appellants submit, to ask that members of the City Council, who by their very nature have a vested interest in and deep prejudice toward their city, put aside for a moment while they act *only* and *impartially* as a *state agency*, not only their oath of office, but all conscious and *subconscious* prejudice toward their city, and toward the people who they represent, who elect them to office and who can recall them, to whom they owe their office, to whom they

must look for re-election? Yet these council members are expected and authorized to make a decision vitally affecting millions of persons residing outside of the city, that will take from them the millions of dollars of their *own* tax money. Furthermore, there is a direct conflict of interest, for if the decision is made in the interests of the citizens and taxpayers residing and owning property outside the city, it will be against the interest of the citizens of the city whose interests the Council members have sworn to uphold. And vice versa, for if the decision is made in the interests of city taxpayers, it will be against the interest of residents and taxpayers outside the city. Finally, as *Amicus Curiae* has suggested, would not members of the City Council be in violation of their oath to the people of the city, if, given the opportunity, as they are by Sections 33950-33954, they did not "unload" the cost of a city redevelopment project on taxpayers living outside of the city?

In the classic case of *Carter v. Carter Coal Company*, 298 U. S. 238, 311, this Court said with reference to the delegation of legislative authority to a partisan agency, "this is legislative delegation in its most obnoxious form" and is "clearly a denial of rights safeguarded by the due process clause". While this case has been the subject of considerable review and discussion, it is submitted that the fundamental principles quoted have not changed.

In the case of the Bunker Hill Project, under Sections 33950-33954, citizens residing in Los Angeles County outside of the City of Los Angeles, are deprived not only of due process of the law, but of equal protection of the laws. As previously observed, they cannot elect or recall Los Angeles City Council members

or the mayor, and neither the Council or mayor is responsible to them in any way. By contrast, residents of the City are fully represented on the Council. They elect and can recall council members, and elect and can recall the mayor. The Council and mayor are responsible to them, and have taken an oath to represent their interests. Clearly, citizens residing outside of the city, do not have, no matter what name is given the Council, State Agency or otherwise, equal protection under the laws (sections 33950-33954) alongside of residents of the city.

One of appellee's most convincing sounding arguments (but again, it is submitted it is illusory) is that there is no difference between appropriating part or all the taxes paid by property within a redevelopment project in order to pay for the project, and exempting part or all of the assessed value of the property within a project from paying taxes, which, appellee asserts the state could do. (App. Mot. Dismiss/Affirm, p. 15.) Appellants agree that the state could do this, and also, as appellee argues, that the end result is the same, namely, the taxing agencies involved lose part or all of their tax revenue from property within a redevelopment project. But there is an important difference between authorizing a city council to *decide* whether taxes belonging to certain non-city taxing agencies shall be appropriated to pay for a city redevelopment project, and the constitutionally approved act of a legislature tax-empting *all* property of a certain category (*i.e.*, that meets certain criteria or standards prescribed by the legislature). The difference is that *the legislature* as the representative of *all* the people in the state, *makes the decision* that property falling in

a certain category shall be tax-exempt, and then prescribes *the standards or criteria* that a property must meet to be exempted. When the legislature makes such a decision there is no option or uncontrolled discretion left to a city council or other local governing body, or state agency, or public official. The only act required of whoever allows the tax-exemption is an *administrative* one of determining that the criteria prescribed by the legislature have been met. By contrast, as already discussed, Sections 33950-33954 pass on to a city council *uncontrolled discretion* to decide *whether* to allocate taxes in a redevelopment project to pay for the project (or to use the parallel offered by appellee, to "tax-exempt" property within the project). The Council is given the absolute decision in the matter, with no criteria or standards to guide it. Thus we return to the contention of appellants that such absolute legislative discretion cannot be delegated by the legislature, and particularly to a city council that has a heavy partisan interest in the outcome of its decision, even to the extent that it is under oath literally to decide in a manner beneficial to its partisan interest; and where, because it is *discretion* and not *administrative authority* that is delegated, taxation without representation results.

The cases cited by appellee on page 15 of its Motion hardly support appellee's argument that a tax allocation is no different from a tax exemption. If anything, they underscore what appellants have been pointing out. First, in all of the cases, except the New York case, in the statute involved the legislature has not said that certain property *may*, but that it *shall* be tax-exempt. In other words, as appellants have attempted

to distinguish, the legislature has *made the decision,* not passed it on to another agency to make. In the New York case, the tax-exemption statute involved, Section 3426 of McKinney's Unconsolidated Laws of New York, was permissive and not mandatory. But the legislature has since re-enacted it to make the tax-exemption *mandatory.* (Sec. 260, Private Housing Finance Law, McKinney's Consolidated Laws of New York). Appellants also believe that it is possible that under the original New York statute the discretion granted to local governmental agencies, did not involve any taxes belonging to other agencies or to taxpayers beyond the jurisdiction of the local agency. It is noteworthy that in none of the cases cited by appellees were the constitutional questions presented by appellants raised. It would seem a reasonable assumption that this is because in the statutes involved (except for New York, which has since been changed) the legislatures made the decision that certain property should be tax exempted, and thus there was no question of unconstitutional delegation of uncontrolled legislative discretion.

Appellee argues that the county, school district, etc., do not actually lose any tax money when their taxes are allocated to pay for a city redevelopment project, because the taxes allocated will come from new construction and increased land values brought about by the project. This is one of those appealing, but illusory "something for nothing" arguments. Although it might be asked if the argument is really pertinent to the discussion, because the ultimate question is not whether the county, school district, etc. benefit from the Bunker Hill Redevelopment Project, but whether their taxes are taken without representation, regard-

less of benefit, appellants believe the fallacy of the argument should be exposed and any application it might have to the facts of this case, refuted.

The basis of appellee's argument is appellee's *assumption* that the new construction in the Bunker Hill Project will be construction attracted to Los Angeles County by the Project. (Since the County includes the Los Angeles School District, Flood Control District and Metropolitan Water District, the county alone is mentioned hereafter.) But this assumption is not supportable, at least, as regards much or most of the anticipated construction in the Project. Consider the 3100 or more apartments to be built in the Project. [Sec. H4, Final Plan, p. 22.] Will they attract new people to Los Angeles County? Will people be motivated to move here just because there is a Bunker Hill redevelopment project? Hardly so. Rather, appellants submit, people who move into apartments on Bunker Hill will move there from other parts of the county (whose 4,000 square miles, half the size of New Jersey, surround the project), or they will be people who were coming to Los Angeles anyway. In either case, the result will be a decreased demand for apartments in other sections of the county, and therefore fewer apartments will be built and pay taxes in these other sections. Or, stated another way, if there were no Bunker Hill Project, these apartments would still be built somewhere in the county and would pay taxes to the county, the flood control and water districts, and in many instances to the school district.

Will the new commercial buildings built in the Project be buildings that would not otherwise be built and pay taxes in Los Angeles County? Again, the answer is,

in the main, no. If a business already locate in the county needs additional office or store space, or a branch, and can economically justify expanding, it is going to expand, and new construction to meet its needs will be built and will pay taxes, whether or not there is a Bunker Hill Project. Nor, can it be sensibly argued that the Project will attract any significant number of firms to the county from other parts of the state or country. A business is going to move here, or open a branch here, only if there are persuasive economic reasons for doing so—a need to better serve customers, meet competition, expand its market, etc. And if there are persuasive economic reasons to move here, the firm is going to do so, and again, a building will be built for it, or rented to it, and in either case pay taxes, whether or not there is a Bunker Hill Project.

The recent completion of two major buildings in downtown Los Angeles dramatically illustrate appellant's point. During hearings before the Los Angeles City Council the Agency described a million square foot office building to be built by a private company in the Project if it were approved. The inference was that this was typical of the new construction and taxes that the Project would bring to the city, county, school district, etc. But the Agency refused to reveal the name of the Company that would build the building. (P. 67 O. B. Respondent Swigart and p. 67 Agency's "Respondent's Brief", Calif. App. Cts.) Only at the Trial was the Agency forced to reveal the name [R. T. 219 *et seq.*]. Then it turned out to be the Occidental Life Insurance Company which ultimately built not in the Project area, but elsewhere in downtown Los Angeles. It is a matter of public record that

the Occidental building cost about $25,000,000 and will pay, at the present tax rate and the building's present assessed value, about half a million dollars in taxes each year to the city, county, school district, etc. This is half a million dollars that the city, county, school district, etc. would not today be receiving if the building had been built in the Project! Could there be a clearer demonstration that far from benefiting the county, school district etc. and their taxpayers, the Project will burden them.

The second building was a multi-story, multi-million dollar structure built by the Pacific Telephone and Telegraph Company within the Project area. It was built as an addition to facilities the company already owned within the Project area, because the company needed additional space. Again, the Project had nothing to do with inducing the Telephone Company to build. In fact, the building was built *in spite of* the Project, for it had to be built to exacting standards imposed by the Agency. But there was impounded as of July 31, 1964, in a "Bunker Hill Trust Account" in the office of the County Auditor-Controller, and pending outcome of this litigation, $743,333.98, representing taxes received from an increase in the assessed value of the Bunker Hill Project area since the date it was adopted. The records show that this increase is *entirely* due to, and the impounded $743,333.98 comes *entirely* from the telephone company's new building. Again, rather than benefiting county, school district, etc. taxpayers, the Project is taking money from them.

The arguments and facts set forth by appellants in the preceding four paragraphs are also offered as an incontrovertible refutation of appellee's clearly errone-

ous conception expressed on page 14 of appellee's Motion to Dismiss or Affirm, that "were it not for the redevelopment project which improves the deteriorated area, there would be no increased valuation" and that "therefore, the tax rates elsewhere (county, school district, etc.) would, absent the redevelopment project, be just as high." (Parenthetical explanation added.)

Appellee in its argument also overlooks the fact that taxes levied by the county, school district and other taxing agencies against property within the Project, are levied to pay for services provided by these taxing agencies, including the education of children of families residing in the Project. Most of these services must be provided, and if taxes from property within the Project that would normally pay for them are siphoned away to pay for the cost of the Project itself, then county, school district, etc. taxpayers residing and owning property outside of the Project are forced to pay higher taxes to make up for those diverted to pay for the Project. Incidentally, this is a clear illustration of appellant's argument that the provisions of Sections 33950-33954 ultimately result in taxation without representation. The inevitable increase in taxes that county, school district, etc. taxpayers must pay to make up for the taxes diverted to pay for the Project, are the result of an action taken by the Los Angeles City Council —yet, as noted, over half of the county, flood control and water district, and many of the school district taxpayers whose taxes are thus increased, reside, and their property is located, outside the jurisdiction of the Council, and they have no representation whatsoever on the Council.

Jurisdiction.

The attempt of a city legislative body, under the guise of a state agency or otherwise, to appropriate taxes of other taxing agencies over which it has no jurisdiction, and to in effect tax citizens and property beyond the borders of the city, and the taxation without representation that results, is so unprecedented, that appellants have been unable to find any cases where it has been attempted in the manner in which it has been attempted here. But if the allegations and facts advanced by appellants have any merit, is there any doubt that substantial questions of the violation of Federal Constitutional rights are involved?

It might be helpful to divide the alleged violations of Federal Constitutional rights into three statements:

1. Sections 33950-33954 of the California Health and Safety Code attempt a completely uncontrolled, absolute delegation, and indeed abdication of legislative authority and responsibility by the California legislature to another agency, in derogation of due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment.

2. Assuming *arguendo* that the legislature may constitutionally delegate the legislative discretion delegated by Sections 33950-33954, it cannot do so to a partisan body that has a heavily prejudiced and vested interest in the outcome of the exercise of the discretion delegated, without violating the due process and equal protection provisions of the Fourteenth Amendment.

3. In any event, the legislature may not delegate authority where the ultimate result is *taxation with-*

out representation, in violation of the due process and equal protection provisions of the Fourteenth Amendment.

After a review of the decisions of this Court in the area involved, appellants suggest that the approach to the questions presented here is perhaps best stated in *Crowell v. Benson,* 285 U. S. 22, 57: "A state may distribute its powers as it sees fit, provided only that it acts consistently *with the essential demands of due process* . . ." (Appellants' emphasis). The court has repeatedly held also that when a tax is levied, the taxpayer involved must have been afforded an opportunity to be heard. *McGregor v. Hogan,* 263 U. S. 234, 237, and frequently cited *Londoner v. Denver,* 210 U.S. 373, 385, in which the Court commented: "Where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings . . . . the taxpayer have an opportunity to be heard." Another case that might be cited is *Senior v. Braden,* 295 U. S. 422, 429: "The validity of the tax under the Federal Constitution has been challenged. Accordingly we must ascertain for ourselves upon what it was levied." And in line with cases cited earlier herein, "Our concern is with realities, not nomenclature."

6. Los Angeles City Ordinance 113231, Approving the Bunker Hill Urban Renewal Project 1-B Plan, Violates the Equal Protection of the Laws Provision of the Fourteenth Amendment in That It Requires Owner-Participants in the Project to Pay Their Pro Rata Share of the Cost of Site Improvements, but Does Not Require Developers Who Purchase Property Within the Preject to Do So.[14]

Under the Bunker Hill Urban Renewal Project Plan, owners of property within the Project area who wish to become owner-participants in the Project, are required to pay the cost of any demolition of improvements on their property and of clearing and levelling, etc, *plus* a pro rata share of the cost of site improvements to be made within the Project. (Final Plan, Paras. D4(1), B1(c) and B2(c), quoted in footnote "6" to California Supreme Court Opinion. See pages 52-53 Apdx. "B", Aps. J. S.) But developers who purchase property within the Project from the Agency are *not* required to pay any costs of demolition, grading, levelling, etc., or their pro rata share of the cost of the site improvements. The only requirement is that they shall pay "fair value", for the property. (Para. C6 of Final Plan quoted pp. 22-23 Aps. J. S.)

Argument.

It is appellee's (the Agency's) contention that "fair value" includes *per se* the cost of site improvements, demolition, clearing, levelling, etc. This contention has been sustained by the lower courts. (Calif. Supr. Ct. Op. p. 61, Apdx. "B", Aps. J. S.) It is appellants'

[14]See footnote 4, p. 11.

contention that "fair value" can *not* be construed as automatically including the cost of demolition, etc., and the cost of site improvements; that while "fair value", or "fair market value", as it is often termed, may have some reasonable meaning in specifying the *total* worth of a piece of property and in insuring that property within the project is sold at its true worth, *it is meaningless as to what share of site improvements, if any of their cost, and of demolition, grading expenses, etc., are specifically included.* It need only be pointed out that the "fair value" (the market value) of a piece of property may be *less* than the cost of site improvements (*i.e.*, public improvements) assessed against it. Public records are replete with instances of where owners unable to sell their property for the cost of public improvements assessed against it, have allowed the property to go by default into public ownership.

Anyone who has dealt in real property, indeed the average home owner, is well aware of the possibility, if not probablity, that public improvements assessed against their property will not necessarily or automatically increase the value of the property by the amount of the improvement assessment. Consider a person owning a home or piece of property that has a market value of $20,000. Public improvements, such as street paving, sidewalks, curbs, a sewer, street lighting, etc., are installed in the vicinity, and $2,000 of the cost assessed against the property. Can the property now *automatically* be sold for $22,000, or more? Is its "fair market value" now automatically at least $22,000? Of course not. The amount of the cost of the improvements assessed against the property may or may *not* be recovered. But if the "fair value," the market value, is

less than $22,000, it certainly cannot be said that a purchaser for *less* than $22,000 is paying the *full* cost of the improvements. Rather, the seller is absorbing all or part of their cost. And, it is submitted, this is exactly what is occurring in the case of the Bunker Hill Project.

The Agency has estimated that the cost of acquiring property within the Bunker Hill Project (*i.e.* the total Project cost) will be $74,181,180, and that it will receive from sale of the property at its "fair value", $42,785,000. (Agency's Respondents Brief in the California appellate courts, pp. 52-53.) Thus, the property will be sold for approximately 42% of its cost. In the cost of the property the Agency properly includes the cost of site improvements, estimated (p. 52) at $4,599,500 and $2,435,372, or a total of over seven million dollars, and demolition and clearance costs of $2,951,000, along with the actual purchase price of the property, survey and planning costs, "property acquisition expenses", etc. and what might be termed "general overhead" expenses. But obviously, when the property is sold for 42% of its cost, all of these costs of acquiring the property and preparing it for sale, cannot be included in the selling price (that is, in its "fair value"). Which costs then are included? Are the costs of the site improvements and demolition included, and some of the other costs left out? Or are others costs included and the cost of site improvements and demolition, etc. left out? Who is to say? Appellants submit that the only reasonable answer, if there can be a reasonable answer to such a question, is that only *forty-two percent* of each of the costs, including *forty-two percent* of site improvements, demolition and grading, etc. costs, are included, and that the balance of *fifty-eight percent* is

being absorbed by the government grants and bond financing to be repaid from taxes, that make the Project possible. But, if this is the case, then the developer purchasing property in the Project pays only *forty-two percent* of his pro rata share of the cost of site improvements, demolition, grading, etc., and owner participants who are required to pay their *full* share of these costs, are clearly discriminated against and deprived of equal protection of the laws.

One of the most conclusive refutations of appellee's contention that the "fair value" price at which property in the Bunker Hill Project must be sold to developers *includes,* and developers purchasing the property therefore will pay a pro rata share of the cost of site improvements, is the fact that the Agency has already offered for sale two large blocks of property within the Project *before* any site improvements (or any substantial part of them) have been made. Bids received for the first parcel were rejected as too low. The sale of the second parcel is being completed at a negotiated price. (Los Angeles Times, Oct. 14, 1963 and Jan. 30, 1964.) How could the cost of site improvements that have not been made, and the actual cost and full nature of which are indefinite,[15] have been included in either transactions?

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[15]That site improvements which the Agency estimated in 1959 would cost some seven million dollars (*supra*), would today cost substantially more, is hardly arguable. Also in any large redevelopment project where, as in the Bunker Hill Project, the final use and development of much of the land has not been determined (see "Proposed Land Use" map, p. 3 of Project Plan; note various large areas marked for "alternate" uses), ultimate changes in land use will surely require major changes in site improvements. Typically, the grading plan for the Project, a very major part of the site improvements, is labelled "Tentative" in the Project Plan (p. 17 of Plan).

On pages 22-23 of their Motion to Dismiss or Affirm, appellees contend (as they did in their Respondent's Brief in the California appellate courts, pp. 206-207, which appear as pp. 26-27 of Apdx. "C", Aps. Mot. D/A) that "Under the Final Plan, owner participants are required to assume financial responsibility for their pro rata share of the cost of public site improvements *to the extent it results in a net benefit to the re-use value of their land*". (Aps. Mot. D/A p. 22, third Para. under Pt. 4, Emphasis added.) The italicized words are a creation of appellee, an interpretation. They are to be found nowhere in the Final Plan as adopted by the City Council. Section D4a(2) on page 12 of the Plan states simply that owner-participants "shall assume financial responsibility for their pro rata share of the costs of the necessary site improvements". If "necessary site improvements" refers to anything other than *all* site improvements to be undertaken as an essential part of the Project, nothing in the Plan says so or even infers so. Thus, a literal reading of this requirement of the Plan is that owner-participants shall pay a pro rata share of the cost of *all* site improvements to be undertaken as a part of the project, not just those that may *benefit* the owner-participant's property.

Assuming *arguendo* appellee's interpretation, *who* determines what improvements among all the various site improvements will benefit a particular property of a would-be owner-participant? Who determines the method of calculating the dollar amount by which they will benefit it, and thus the share of the cost of the improvements an owner-participant must pay? The answer, of course, is the Agency—and *only* the Agency.

which must be considered as having a prejudiced interest in recovering from an owner-participant as much as possible of the cost of any site improvements, and in making as many site improvements as possible at the expense of owner-participants. (Fair as the Agency might attempt to be, it has to be considered that such prejudice could and even does exist.) And what protection or recourse does an owner-participant have against such prejudice, or against what he may consider an excessive pro rata assessment regardless of the reason? None. He is completely at the mercy of the Agency. There is no opportunity for an owner-participant to protest. The Plan contains no provision for a hearing or for judicial review. An owner participant either accepts the Agency's idea of what site improvements benefit his property, and how much of their cost he should pay, or he is not permitted to participate. And this is the most *favorable treatment* an owner-participant can expect. Yet it requires the acceptance of an interpretation not expressed in the Plan but only suggested by appellees. If the provisions of the Plan are followed *without the addition of appellee's interpretation,* then owner-participants are required to pay a pro rata share of the full seven million dollars or more of site improvements contemplated by the Agency.

It is noteworthy that nothing in the Plan or Ordinance approving it, suggests that the language of the Plan be interpreted as appellees wish to do. If it were intended that owner-participants pay only a pro rata share of those improvements that *benefit* their property, surely some standards would, and *should* have been provided in the Plan or Ordinance to guide the

Agency in determining which of the many, varied and extensive site improvements contemplated would benefit or not benefit a particular property, and if they benefited it, to what extent. And surely there would, and *should* have been some means of protest and judicial review provided for owners who might not agree with the Agency's determination of which, if any, site improvements benefited their property, or the Agency's determination of the *extent* of the benefit. Failing the inclusion in the Plan or Ordinance approving it of any such standards, or any such provision for a hearing or judicial review of assessments levied by the Agency, if the interpretation suggested by appellees is adopted, then, it is submitted the Plan and Ordinance are unconstitutionally uncertain, and further unconstitutional because of delegation of legislative discretion without essential standards to control its exercise, and indeed the delegation to the Agency of confiscatory power, and because owner-participants are not afforded a hearing on, or judicial review of assessments that may be made against their property by the Agency.

The indefinite, if not arbitrary methods of assessing site improvement costs against owner-participants are indicated by the testimony of Mr. Bill, Executive Director of the Agency at the time, quoted and described by appellee on page 23, Appendix "C" of Appellee's Motion to Dismiss or Affirm, to wit: that assessments for site improvements against the property of owner-participants will not be made by the Agency on a square foot basis, or a percentage basis, but on an "equitable" basis. Appellants submit that intent to be "equitable" is an indefinite, and from a constitutional or legal viewpoint unacceptable method of insuring justice.

It is also submitted that whether an owner-participant pays a pro rata share of the full seven million dollars or more of site improvements contemplated, or a pro rata share of only those improvements that benefit his property, owner-participants will still be discriminated against when compared to developers purchasing Project property. As argued *supra* it simply cannot be said (as appellees say on page 206 of their Respondent's Brief in the California courts, quoted page 26, Appendix "C" of Appellee's Motion to Dismiss or Affirm) that a developer who pays "fair value" for Project property will automatically be paying for any site improvements that *benefit* that property, and therefore will be in the same position as owner-participants. Among the arguments advanced *supra* that particularly refute this are: (1) The Agency is already selling land in the Project before any site improvements (or any substantial amount of them) have been commenced; (2) The Agency itself has estimated that the "fair value" sale price of Project property will recover only *forty-two percent* of the cost of acquiring the land and preparing it for sale, *including the cost of site improvements;* and (3) as regards demolition and clearing costs, owner-participants are required to pay the *full* cost of these *whether or not they benefit their property* (or are only required by the Agency for aesthetic or other reasons) while purchasers of Project property (under the argument advanced by appellee) would pay such costs *only* if they *benefited* the property and increased its "fair value".

On page 207 of Respondent's brief in the California appellate courts (quoted p. 27, Appx. "C", Aps. Mot. Dismiss/Affirm) appellee argues that the Agency obviously could not sell property for *more* than its "fair

market value," apparently inferring that it would be impractical for the Agency to add a pro rata share of the cost of site improvements to the "fair value" sale price. Granted. But there is another, simple means of eliminating the discrimination against owner-participants created by the requirements in the present Plan that they must pay for site improvements, demolition, clearing, etc., while developers purchasing Project property are exempted from these costs—and that is: eliminate these requirements. As appellants have pointed out (P. 123, App. O. B. Calif. App. Cts.) and neither appellee or the courts have refuted, nothing in California or Federal urban renewal law requires that owner-participants in a redevelopment project shall be charged any part of the cost of site improvements, or for costs of demolition, clearing, etc. in connection with their property. It is not for appellants to suggest any of a number of more equitable approaches to the problem involved, but if the Agency were to assume all costs of site improvements, demolition, clearing, etc. and in dealing with an owner-participant credit him with a fair acquisition cost for his property, and then sell the property back to him at the same "fair value" charged developers, owner-participants and developers would be treated identically.

The approach suggested in the last sentence of the paragraph preceding underscores an important point, that except as owners, or owner-participants are set apart by the arbitrary and discriminatory provisions of the present Plan, there *is* no difference between an owner and a developer. Both belong, for purposes of the law, to the same class. Both are prospective developers of Project property, who if permitted to own

purchaser or owner-participant, must both agree and conform to the same conditions and regulations established by the Agency.

Jurisdiction.

A review of applicable decisions by this Court reveals an understandable reluctance of the Court to interfere with assessment procedures adopted by the states. But it also discloses that this Court has not hesitated, where justified, to afford a judicial review to those claiming that they have been deprived of their rights under the Federal Constitution, and in particular of equal protection of the laws as guaranteed under the Fourteenth Amendment, by unequal or discriminatory assessment laws and practices within the states. *Valley Farms Co. v. Co. of Westchester,* 261 U. S. 149, 154, *Fort Smith Light Co. v. Paving District,* 247 U. S. 387. *Wheeling Steel Corp. v. Glander,* 337 U. S. 562, 572, in which the Court stated:

> "It seems obvious that appellants were not afforded equal trestment, and the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner."

And a case often quoted, *Gast Realty and Investment Co. v. Schneider Granite Co.,* 240 U. S. 55, 58, wherein the Court pointed out:

> "If the law is of such character that there is no reasonable presumption that substantial justice will be done but the probability is that the parties will be taxed disproportionately to each other and to the benefits conferred the law cannot stand against the complaint of one so taxed in fact."

Conclusion.

If a substantial Federal Constitutional question is posed by a challenge to a state statute on grounds that it results in *taxation without representation*, if a substantial Federal Constitutional question is raised by state legislation that authorizes a city council whose members are under oath to represent the best interests of the citizens of the city who elect them and whom they represent, to appropriate to pay for a city redevelopment project by merely designating the council a state agency, tens of millions of dollars of taxes belonging to a county, school district, a flood control district, and a water district, more than half of whose taxpayers (in the case of the county, flood control and water districts, and in the case of the school district many of whose taxpayers) reside, and their property that is taxed is located, beyond the city limits and the jurisdiction of the city council, then such a Federal question (question No. 1 *supra*) is herein presented to this Court.

With regard to the question of unequal and discriminatory assessments resulting in denial of due process of law, the second question posed herein, appellants submit that as cited *supra* this Court has reviewed such a question on numerous occasions. And if appellants correctly interpret the Court's thinking as specifically expressed in a number of these decisions, it is that there can be no hard and fast rule to cover all such cases, but that the individual facts in each case must be examined and weighed. *Atchison, etc. Railway Co. v. Public Utilities Commission*, 346 U. S. 347, 353; *Nashville, etc. Railway v. Walters, Commissioner of Highways*, 294 U. S. 405, 415. Certainly, too, there is raised a question worthy of this Court's consideration,

where it appears that the owners of property within a redevelopment project, who are forced to participate in the project or have their homes and businesses taken from them through condemnation, are assessed, if they participate, costs that developers who become participants purely for the sake of profit, are not assessed.

It is submitted that substantial Federal questions are presented by appellants' appeal, and that these questions were raised in the California courts and passed on by the California Supreme Court in such manner as to permit this Court to take jurisdiction. It is therefore urged that appellee's Motion to Dismiss or Affirm be denied, and that appellants be afforded a plenary review of the questions they have presented.

Respectfully submitted,

PHILL SILVER,

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